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REMARKS

Claims 1-30 are currently pending. No amendments have been made.

1. Claim Objections

The Office has objected to claim 17 as being an improper dependent claim for failing to further limit the subject matter of a previous claim. In particular, the Office has stated that claim 17 is a duplicate of claim 16.

Claim 16 is directed to the wet wipe of claim 10 wherein the natural broad spectrum antimicrobial is present in the liquid formulation in an amount of from about 0.0001% (by total weight of the formulation) to about 0.1% (by total weight of the formulation).

Claim 17 is similar to claim 16, except states the natural broad spectrum antimicrobial is present in the liquid formulation in an amount of from about 0.0001% (by total weight of the formulation) to about 0.01% (by total weight of the formulation).

The range of amount of natural broad spectrum antimicrobial present in the liquid formulation defined by claim 17 is thus different from the range defined by claim 16. As such, claim 17 is not a duplicate of claim 16 and is a proper dependent claim. Applicants thus request the objection to claim 17 be withdrawn.

The Office has further objected to claims 19 and 23 as being unclear with respect to the phrase "not substantially affecting the growth rate of Gram positive bacteria," and has

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asked for a clear definition of "not substantially affecting" with respect to the growth rate of Gram positive bacteria.

Initially, applicants note that claim language is analyzed in light of the content of the particular application disclosure.<sup>1</sup> Furthermore, use of terms of degree, such as substantially, is acceptable when one of ordinary skill in the art would understand what is claimed, in light of the specification.<sup>2</sup> In the present case, applicants submit that the meaning of "not substantially affecting the growth rate of Gram positive bacteria" will be understood by one skilled in the art upon reading the specification. For instance, Example 4 describes a test of three different Yucca species extracts for their ability to selectively inhibit the growth of five different bacteria (*Escherichia coli*, *Staphylococcus epidermidis*, *Proteus mirabilis*, *Staphylococcus aureus*, and *Corynebacterium ammoniagenes*) and one yeast (*Candida albicans*). The Yucca species extracts were tested at eight different concentrations (from 0% to 5%), and the results are listed in Tables 4-9 in terms of Optical Density at 650 nm (i.e.,  $OD_{650} = OD_{650} \text{ at 16 hours} - OD_{650} \text{ at 0 hours}$ ). As can be seen from these results, the effect on the growth rate of Gram positive bacteria may vary depending on the type of Yucca species extract, the concentration of Yucca species extract, and the specific bacteria. However, one skilled in the art will readily understand the meaning of "not substantially affecting the growth rate of Gram positive bacteria" for different

<sup>1</sup> MPEP §2173.02.

<sup>2</sup> MPEP §2173.05(b).

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concentrations and types of Yucca species extract by reference to the results provided in Example 4. As such, applicants request the objection to claims 19 and 23 be withdrawn.

2. Rejection of the Claims under 35 U.S.C. §102(e)

Reconsideration is requested of the rejection of claims 1-30 under 35 U.S.C. §102(e) as being anticipated by Howard, et al. (U.S. Patent No. 6,552,171).

Claim 1 is directed to a wet wipe for improving skin health. The wet wipe comprises a wipe substrate and a liquid formulation, the liquid formulation comprising a Yucca species extract and a broad spectrum antimicrobial.

Howard, et al. disclose hydrolyzed jojoba protein and methods for producing hydrolyzed jojoba protein. Also disclosed are cosmetic products, such as shampoos, conditioners, bath and shower gels, and sanitizing wipes, comprising the hydrolyzed jojoba protein. Howard, et al. also disclose a hand lotion formulation comprising 0.05% Green Tea Extract and 0.03% Yucca extract.

Specifically, Howard, et al. do not disclose a wet wipe comprising a wipe substrate and a Yucca species extract and a broad spectrum antimicrobial. Although Howard, et al. list sanitizing wipes and premoistened towelettes as two types of cosmetic products which may comprise their hydrolyzed jojoba proteins, there is no disclosure that these wipes also comprise a Yucca species extract and a broad spectrum antimicrobial. The Office has pointed to Tables 6 and 7 in Howard, et al. as disclosing compositions comprising Yucca extract and green tea

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extract. Tables 6 and 7, however, merely disclose a list of ingredients that are used by Howard, et al. to make hand lotion and moisturizing hand cream, not a liquid formulation for use in a wet wipe.

As stated in M.P.E.P. §2131, a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. Since Howard, et al. fail to disclose a wet wipe comprising a wipe substrate and a liquid formulation comprising a Yucca species extract and a broad spectrum antimicrobial, Howard, et al. fail to disclose each and every limitation of claim 1. As such, claim 1 is novel over Howard, et al.

Claims 2-9 depend from claim 1 and are thus patentable over Howard, et al. for the same reasons as set forth above for claim 1 as well as for the additional elements they require.

In addition, claim 2 requires the Yucca species extract be selected from the group consisting of Yucca 70 liquid, 100% Yucca Schidigera powder, and 50% Food Grade Yucca powder. Howard, et al. do not disclose Yucca 70 liquid, 100% Yucca Schidigera powder, or 50% Food Grade Yucca powder, and thus fail to disclose this additional limitation. As such, claim 2 is patentable over Howard, et al. for this additional reason.

In addition, claim 6 requires the broad spectrum antimicrobial to be selected from the group consisting of alcohols having from one to about 6 or 7 carbon atoms per molecule, triclosan, triclocarban, p-chloro-m-xyleneol, benzalkonium chloride, chlorohexidine gluconate, hexachlorophene, and combinations thereof. Howard, et al. do

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not disclose any of these broad spectrum antimicrobials, and thus fail to disclose this additional limitation. As such, claim 6 is patentable over Howard, et al. for this additional reason.

Claim 10 is similar to claim 1, except the liquid formulation comprises a Yucca species extract and a natural broad spectrum antimicrobial. Claim 10 is thus patentable over Howard, et al. for the same reasons as set forth above for claim 1 as well as for the additional elements it requires.

Claims 11-18 depend from claim 10 and are thus patentable over Howard, et al. for the same reasons as set forth above for claim 10 as well as for the additional elements they require.

In addition, claim 11 requires the Yucca species extract be selected from the group consisting of Yucca 70 liquid, 100% Yucca Schidigera powder, and 50% Food Grade Yucca powder. Howard, et al. do not disclose Yucca 70 liquid, 100% Yucca Schidigera powder, or 50% Food Grade Yucca powder, and thus fail to disclose this additional limitation. As such, claim 11 is patentable over Howard, et al. for this additional reason.

Claim 19 is directed to a method for improving skin health. The method comprises contacting the skin with a wet wipe capable of reducing the growth rate of Gram negative bacteria and yeast on the surface of the skin while not substantially affecting the growth rate of Gram positive bacteria, the wet wipe comprising a wipe substrate and a liquid formulation, the liquid formulation comprising a Yucca species extract.

As discussed above with respect to claim 1, Howard, et al. list sanitizing wipes and premoistened towelettes as two types

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of cosmetic products which may comprise their hydrolyzed jojoba proteins, but there is no disclosure that these wipes also comprise a Yucca species extract. Rather, Howard, et al. merely disclose Yucca extract as one ingredient that may be used to make hand lotion and moisturizing hand cream, but do not disclose Yucca extract as a component of a liquid formulation for use in a wet wipe. Since Howard, et al. fail to disclose each and every limitation of claim 19, claim 19 is novel over Howard, et al.<sup>3</sup>

Claims 20-22 depend from claim 19 and are thus patentable for the same reasons as set forth above for claim 19 as well as for the additional elements they require. In addition, claim 20 requires the Yucca species extract be selected from the group consisting of Yucca 70 liquid, 100% Yucca Schidigera powder, and 50% Food Grade Yucca powder. Howard, et al. do not disclose Yucca 70 liquid, 100% Yucca Schidigera powder, or 50% Food Grade Yucca powder, and thus fail to disclose this additional limitation. As such, claim 20 is patentable over Howard, et al. for this additional reason.

<sup>3</sup> The Office has also stated that Yucca species plants contain saponin (citing the Geocities reference) and that saponins are a class of triterpenes. The Office has further stated that Nostro, et al. Letters in Applied Microbiology, 2000, Vol. 30, pp. 379-384) teach that plant extracts containing saponin exhibit bacterial growth inhibition of both Gram positive bacteria and Gram negative bacteria.

Initially, applicants note that although Yucca species extracts may comprise saponin, this saponin is steroidal saponin, not triterpene saponin (see Geocities reference). In addition, Nostro, et al. do not mention saponins and, in particular, do not state that steroidal saponins inhibit the growth of both Gram positive and Gram negative bacteria. Rather, Nostro, et al. state that the antimicrobial activity of the extracts they tested was probably due to flavonoids and terpenes (see Nostro, et al., p. 383 and abstract).

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Claim 23 is similar to claim 19, but the liquid formulation further comprises a natural broad spectrum antimicrobial. Claim 23 is thus patentable for the same reasons as set forth above for claim 19 as well as for the additional elements it requires.

Claims 24-30 depend from claim 23 and are thus patentable for the same reasons as set forth above for claim 23 as well as for the additional elements they require. In addition, claim 24 requires the Yucca species extract be selected from the group consisting of Yucca 70 liquid, 100% Yucca Schidigera powder, and 50% Food Grade Yucca powder. Howard, et al. do not disclose Yucca 70 liquid, 100% Yucca Schidigera powder, or 50% Food Grade Yucca powder, and thus fail to disclose this additional limitation. As such, claim 24 is patentable over Howard, et al. for this additional reason.

3. Rejection of the Claims under 35 U.S.C. §103(a)

Reconsideration is requested of the rejection of claims 2, 6, 11, 20, and 24 under 35 U.S.C. §103(a) as being unpatentable over Howard, et al. (U.S. Patent No. 6,552,171) in view of Sato (Japanese Patent No. 2001011496).

Initially, applicants note that the Office has not rejected claims 1, 10, 19, or 23 under 35 U.S.C. §103(a) over Howard, et al. in view of the Sato abstract. Since claim 6 depends from claim 1, claim 11 depends from claim 10, claim 20 depends from claim 19, and claim 24 depends from claim 23, these claims are also patentable under 35 U.S.C. §103(a) over Howard, et al. in view of the Sato abstract.

Howard, et al. is discussed above.

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The Sato abstract discloses a detergent used for sterilization, taking odor off, and anti-oxidation of a food surface, and sterilization, washing, and taking odor off a working machine and the fingers of its operator. The detergent comprises 40-80 wt.% ethanol, 0.05-5 wt.% of a tea extrudate, 0.05-5 wt.% Yucca form extrudate, and 59.9-5 wt.% water. The Yucca form extrudate is derived from Yucca schidigen and has an antifungal action.

Claim 2 depends from claim 1, discussed above, and further requires the Yucca species extract be selected from the group consisting of Yucca 70 liquid, 100% Yucca Schidigera powder, and 50% Food Grade Yucca powder.

As stated in MPEP §2143, in order for the Office to show a prima facie case of obviousness, the Office must meet three criteria: (1) the prior art reference(s) must teach or suggest all of the claim limitations; (2) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings; and (3) there must be some reasonable expectation of success.

As discussed above, Howard, et al. do not disclose a wet wipe comprising a wipe substrate and a Yucca species extract and a broad spectrum antimicrobial. Rather, Tables 6 and 7 of Howard, et al. merely disclose Yucca extract and green tea extract as ingredients that may be used to make hand lotion and moisturizing hand cream. This deficiency is not rectified by Sato. The Sato abstract discloses a detergent composition that may comprise Yucca Schidigen extrudate. There is no disclosure



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in the Sato abstract that the detergent composition may be used in a wet wipe. The cited references thus do not teach or suggest all the limitations of claim 2.

Furthermore, in combining these references, the Office states that it would have been obvious to use Yucca Schidigen in the jojoba solution of Howard, et al. because Sato teaches that Yucca Schidigen extrudate has an antifungal effect. Applicants assert that such a combination is not proper, as there is no motivation to combine the references to arrive at each and every element of Applicants' invention, as discussed below.

For example, Howard, et al. use the Yucca Extract listed in Tables 6 and 7 as a stimulant (see col. 4 of Tables 6 and 7). In contrast, the Sato abstract states that Yucca Schidigen extrudate can have antifungal action, but mentions nothing about the Yucca extrudate acting as a stimulant. There would thus be no motivation for one skilled in the art to combine Howard, et al. and the Sato abstract, or to modify the composition of Howard, et al. to comprise Yucca Schidigen. Claim 2 is thus patentable over the cited references for this additional reason.

Claim 11 (dependent on claim 10, discussed above), claim 20 (dependent on claim 19, discussed above), and claim 24 (dependent on claim 23, discussed above) are similar to claim 2 in that they require the Yucca species extract to be selected from the group consisting of Yucca 70 liquid, 100% Yucca Schidigera powder, and 50% Food Grade Yucca powder. Claims 11, 20, and 24 are thus patentable for the same reasons as set forth above for claim 2.

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Claim 6 depends from claim 1 and further requires the broad spectrum antimicrobial be selected from the group consisting of alcohols having from one to about 6 or 7 carbon atoms per molecule, triclosan, triclocarban, p-chloro-m-xlenol, benzalkonium chloride, chlorohexidine gluconate, hexachlorophene, and combinations thereof.

As discussed above, Howard, et al. do not teach or suggest a wet wipe comprising a wipe substrate and a liquid formulation comprising a Yucca species extract and a broad spectrum antimicrobial. Nor do Howard, et al. teach or suggest any of the broad spectrum antimicrobials listed in claim 6. This deficiency is not overcome by Sato. For one, the Sato abstract discloses a detergent for sterilizing, odor removal, and anti-oxidation of a food surface, a working machine, and fingers, but does not disclose a wet wipe. The combination of Howard, et al. and the Sato abstract thus do not teach all of the claim limitations of claim 6.

Furthermore, in combining these references, the Office has stated that Sato teaches a sterilization detergent that is comprised of ethanol, and since alcohols are known for their antimicrobial uses, it would be obvious to modify the jojoba protein solution of Howard, et al. to contain ethanol. Applicants assert that such a combination is not proper, as there is no motivation to combine the references to arrive at each and every element of Applicants' invention, as discussed below.

As discussed above, Howard, et al. makes no disclosure that a broad spectrum antimicrobial can be used in a wet wipe. In

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particular, Howard, et al. makes no disclosure that an alcohol having from one to about 6 or 7 carbon atoms per molecule can be used in a wet wipe or in the jojoba compositions of Howard, et al. Furthermore, Howard, et al. provide no disclosure as to why a broad spectrum antimicrobial should be included in their jojoba compositions. There is thus no reason or motivation for one skilled in the art to modify Howard, et al. to include a broad spectrum antimicrobial as listed in claim 6 and a Yucca species extract in a wet wipe. Although the Sato abstract discloses a detergent composition comprising ethanol, there is no discussion in the Sato abstract of using the ethanol in a wet wipe or in a hand lotion or moisturizing hand cream, as described in Howard, et al. Therefore there is no motivation in Howard, et al. or the Sato abstract to modify or combine these references to arrive at the wet wipe of claim 6. Claim 6 is thus patentable for this additional reason.

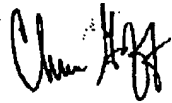
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CONCLUSION

Applicants request reconsideration of the rejection of claims 1-30 and allowance of all pending claims. The Commissioner is hereby authorized to charge any government fees which may be required to Deposit Account No. 19-1345.

Respectfully Submitted,



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